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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,105	12/18/2001	Govindan Gopinathan	GOPI 0114 PUS	3534

7590

10/06/2003

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EXAMINER

NASSER, ROBERT L

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/024,105

Applicant(s)

GOPINATHAN ET AL.

Examiner

Robert L. Nasser

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3736

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 17-35, 37, 39-450 and 9015 is/are rejected.
- 7) ☒ Claim(s) 6, 8, 16, 36, 38, 51, 53 and 61 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3,5. 6) ☐ Other: \_\_\_\_.

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The examiner notes that all of the current claims require at least 8 ekg sensors on one member. The parent applications only provide support for up to 6 on one member, wit the other sensor on a second member. Therefore the current claims are not entitled to the filing date of the parent, and have only the current filing date, or December 18, 2001.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5, 7, 9-15, 17-35, 37, 39-50, 52, 54-60, and 62-71 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-94 of U.S. Patent No. 6224548 in view of David. The only difference in the current claims and the previous invention is that current claims require at least 7 electrodes. David shows a similar glove member with 12 EKG electrodes and other diagnostic devices. As such, it would have been obvious to modify the previous inventions to use 12 electrodes, as it is merely the substitution of one known diagnostic device for another. The exact arrangement of elements would have been obvious to one skilled in the art.

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Claims 1-5, 7, 9-15, 17-35, 37, 39-50, 52, 54-60, and 62-71 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-100 of U.S. Patent No. 6248064 in view of David. The only difference in the current claims and the previous invention is that current claims require at least 7 electrodes. David shows a similar glove member with 12 EKG electrodes and other diagnostic devices. As such, it would have been obvious to modify the previous inventions to use 12 electrodes, as it is merely the substitution of one known diagnostic device for another. The exact arrangement of elements would have been obvious to one skilled in the art.

Claims 1-5, 7, 9-15, 17-35, 37, 39-50, 52, 54-60, and 62-71 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of U.S. Patent No. 6540673 in view of David. The only difference in the current claims and the previous invention is that current claims require at least 7 electrodes. David shows a similar glove member with 12 EKG electrodes and other diagnostic devices. As such, it would have been obvious to modify the previous inventions to use 12 electrodes, as it is merely the substitution of one known diagnostic device for another. The exact arrangement of elements would have been obvious to one skilled in the art.

Claims 1-5, 7, 9-15, 17-35, 37, 39-50, 52, 54-60, and 62-71 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-64 of U.S. Patent No. 6595918 in view of David. The only

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difference in the current claims and the previous invention is that current claims require at least 7 electrodes. David shows a similar glove member with 12 EKG electrodes and other diagnostic devices. As such, it would have been obvious to modify the previous inventions to use 12 electrodes, as it is merely the substitution of one known diagnostic device for another. The exact arrangement of elements would have been obvious to one skilled in the art.

Claims 9, 43, and 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims recite that the index portion is at least as long as about the middle finger portion. It is unclear how one thing is at least as long as about something else.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7, 14, 15, 17-35, 37, 39-42, 46-50, 52, 59, 60, 62-71 are rejected under 35 U.S.C. 102(e) as being anticipated by David. David shows a glove (the shown embodiments appear to be the glove/sleeve combination, but it does state that it may be incorporated into only a glove) combination including 4 phalange portions, as thumb portion, a wrist portion, a palmer portion, and a dorsal portion, with 12 electrodes

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mounted on the device, a device 24 for communicating with remote monitoring equipment, and other diagnostic devices including a temperature sensor 44, a blood pressure measuring device 16 and 18, a pulse oximeter 36, a heart beat detector 38, and an auscultation device 50 and 52. All of the electrodes are on the palmer side of the glove (see column 5, line 54-58), with some on the wrist portion, some on the palmer surface and some on the phalange portions, including the pinky portion. Claims 70 and 71 are rejected in that David sows the recited method.

Claims 33, 34, 35, 37, and 48 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Akiva. Akiva shows a n apron )member) having 12 electrodes and a communication link 3 for communicating with external equipment. The examiner notes that the member has not been defined in terms of the hand, so palmer and dorsal are being interpreted to merely refer to opposite sides of the device.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-13, 43-45, and 54-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over David. Claims 9, 10, 43, 44, 54, and 55 are rejected in that applicant has not stated that the arrangement of the glove solves a stated problem and has not stated that its arrangement is for a specific purpose. In addition, applicant has not shown any unexpected results from extending the index finger relative to the middle

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finger. Hence, it would have been obvious to modify David to extend the index finger, as it is merely a matter of design choice for one skilled in the art. Claims 11-13, 45, and 56-58 are rejected in that applicant has not stated that the arrangement of the electrodes on the member glove solves a stated problem and has not stated that the arrangement is for a specific purpose. In addition, applicant has not shown any unexpected results from the recited arrangement. Hence, it would have been obvious to modify David to locate the electrodes as claimed, as it is merely a matter of design choice for one skilled in the art.

Claims 6, 8, 16, 34, 38, 51, 53, and 61 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. These claims define over the art in that none of the art has the electrodes facing in different directions, as recited.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dominquez and Hoppman show electrode patches.

Keirsbilck shows a glove with sensors mounted thereon.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is (703) 308-3251. The examiner can normally be reached on Mon-Fri, variable hours.

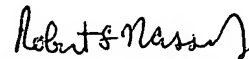
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone



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number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Robert L. Nasser  
Primary Examiner  
Art Unit 3736

RLN  
September 26, 2003

ROBERT L. NASSER  
PRIMARY EXAMINER